

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

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MERISANT COMPANY

Plaintiff,

v.

McNEIL NUTRITIONALS, LLC

Defendant,

and

McNEIL-PPC, INC.

Defendant.

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Civil Action No.

**MOTION TO COMPEL COMPLIANCE WITH SUBPOENA FOR  
INSPECTION ISSUED TO TATE & LYLE SUCRALOSE, INC.**

Pursuant to Federal Rule of Civil Procedure 37, Merisant Company ("Merisant") respectfully requests that the Court enter an order compelling Tate & Lyle Sucralose, Inc., ("Tate & Lyle") to comply with Merisant's subpoena for inspection issued on June 29, 2006. In support of its motion, Merisant states:

1. In connection with a false advertising action in the Eastern District of Pennsylvania relating to McNeil Nutritionals, LLC and McNeil-PPC, Inc., (collectively "McNeil"), and its advertising of its artificial sweetener Splenda®, *Merisant Company, Inc. v. McNeil Nutritionals, Inc.*, No. 04-cv-5504 (E.D. Pa. filed Nov. 26, 2004), Merisant issued a subpoena to Tate & Lyle to inspect the

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manufacturing plant originally built and operated by defendant McNeil where Splenda sucralose is made. Tate & Lyle is now McNeil's exclusive United States manufactruer of Splenda sucralose and has been business partners with McNeil for many years. Tate & Lyle objected to this suboena for inspection.

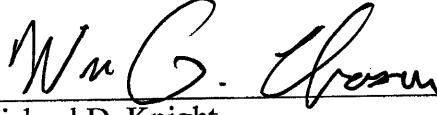
2. After the exchange of numerous correpondence on this issue, Merisant and Tate & Lyle participated in a meet and confer by telephone on August 21, 2006. Tate & Lyle stood by its objections.

3. This Court has jurisdiction to hear this motion because the subpoena was issued from this jurisdiction and the facility at issue resides in this Distrc. *See, e.g., Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 444 F.3d 462, 468 (6th Cir. 2006)(“[A]ny disputes that arise over the suboena of a nonparty are decided by the court that issued the subpoena.”).

In further support of its motion, Merisant submits the attached Memorandum of Law. It also submits under seal the Declaration of Jonathan D. Brightbill and attached Exhibits.

WHEREFORE, Merisant respectfully moves this Court for an order compelling Tate & Lyle to comply with Merisant's Subpoena for inspection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wm G. Chason", is written over a horizontal line.

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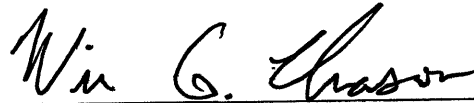
*Attorneys for Plaintiff  
Merisant Company*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, true and correct copies of plaintiff Merisant's Motion to Compel Compliance with Subpoena for Inspection Issued to Tate & Lyle Sucralose, Inc., were served on the following counsel of record:

**Via Hand Delivery**

Steven A. Zalesin  
Clay J. Pierce  
Rosa E. Son  
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A handwritten signature in black ink, appearing to read "Wm G. Chason", is written over a horizontal line.

William G. Chason

Date: September 5, 2006